

Is a YouTuber part of the news media? WA Supreme Court gives guidance in recent ruling

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The case of a man with a YouTube channel who sought records from Pierce County after a confrontation at the courthouse has prompted a Washington State Supreme Court opinion regarding the definition of “news media.”

The man, Brian Green, sought public records for his Libertys Champion YouTube channel, including photos and birth dates of jail workers and sheriff’s deputies on duty at the time of the confrontation. Such photos and birth dates [are exempt from public disclosure under state law](#), but journalists are entitled to them.

Green sued Pierce County for the records, and Thurston County Superior Court Judge Christopher Lanese found that Green and his YouTube channel count as “new media.” Pierce County appealed.

The high court ruling reversed Lanese’s decision.

“We conclude that the statutory definition of ‘news media’ requires an entity with a legal identity separate from the individual,” Justice Raquel Montoya-Lewis wrote for the majority in the 7-2 opinion Thursday. “Here, Brian Green has not proved that he or the Libertys Champion YouTube channel meets the statutory definition of ‘news media,’ and, thus, he is not entitled to the exempt records.”

The opinion also acknowledged that the media landscape has drastically changed since the state law defining news media was written 14 years ago.

“The manner in which we access news today is vastly different from how we did it in 2007, and this statutory definition may not comport with the current intersection of social media and the news,” Montoya-Lewis wrote. “However, the legislature, not the court, is responsible for enacting statutes, and this court is bound by the statute’s unambiguous language.”

Justices Steven González, Charles Johnson, Barbara Madsen, Susan Owens, Debra Stephens and Mary Yu signed the opinion.

Court records give this account of the public records dispute:

Green and another person went to the County-City Building on Nov. 26, 2014 in downtown Tacoma to pay a parking ticket and to file something.

At security a guard asked to search the other person's bag, and that person refused, then started taking video when a sheriff's deputy arrived.

The deputy gave Green and the other person two options to avoid a bag search: leave with the bag or go into the courthouse without it. They refused, arguing that the County-City Building is public, and the person with the bag argued his right to privacy was being violated.

"The conversation escalated, and the deputy asked the men to leave," Montoya-Lewis wrote. "When Green stood too close to him, the deputy shoved Green and caused him to fall backward onto the floor. The deputy arrested Green for criminal obstruction and took him to jail."

He was released the next day, and the Prosecutor's Office dismissed the charge.

It was several years later that Green requested records from the Pierce County Sheriff's Department, asking for photos, birth dates, ranks, positions, badge numbers, hiring dates and ID badges for detention center personnel, jail personnel and "deputies on duty Nov. 26 and 27, 2014."

He sent his request from his band's email address, and referred to himself as an "Investigative Journalist" in the email signature.

The agency responded with 11 pages of records but said photos and dates of birth were exempt from disclosure.

Green argued he was entitled to those records because he met the definition of "news media" under state law. He said he covers local court cases on his channel, and that the channel has about 6,000 subscribers.

The trial court sided with Green and "concluded that the statutory definition of 'news media' does not require a specific corporate form or financial profit," Montoya-Lewis wrote. "It also noted that the Libertys Champion YouTube channel has been in existence for several years and publishes videos approximately every week with the purpose of gathering and disseminating news."

The Supreme Court majority reversed the trial court's decision and found Green and his YouTube channel don't qualify as "news media" under the law.

Justices G. Helen Whitener and Sheryl Gordon McCloud dissented.

"From the perspective of the First Amendment, distinguishing different news media based on size or organizational structure or status as a legal entity is disfavored, if not

outright impermissible,” Whitener wrote. “To hold that (the state law) provides otherwise, as the majority does, risks construing the statute in an unconstitutional manner, a result we must avoid.”

She wrote that all Green would have to do to qualify, given the majority’s interpretation of the law, is to register a limited liability company.

“If the legislature wanted to prevent the release of this information, it is well within their power to draft a bill that would do so,” Whitener wrote. “But the law as it stands requires the release of this information due to Libertys Champion’s status as news media.”

The First Amendment Clinic at Duke Law School, Pierce County Corrections Guild, Washington State Association of Broadcasters, Radio Television Digital News Association, Washington Newspaper Publishers Association and Allied Daily Newspapers of Washington [filed briefs in the case](#).

Some, including the Allied Daily Newspapers of Washington, raised concerns about the potential implications of the case for [the state’s shield law](#), which protects journalists from being compelled to testify, identity sources or turn over notes or other information from their news gathering.

“This case is the first to interpret the shield law’s definition of news media,” their brief argued. “There is a danger of stretching the definition so far as to jeopardize the law’s continued existence. If the term ‘news media’ includes everyone posting commentary online or self-identifying as journalists, the potential impact on the justice system is significant.”

It went on to say: “While Allied Daily Newspapers supports the broadest possible access to government records, extending the shield law to any self-proclaimed journalist is a risky way to accomplish that.”



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